

FCC MAIL SECTION

Before the
 JUN 28 1999 Federal Communications Commission FCC 99I-15
 Washington, D.C. 20554

DISPATCHED BY

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In re Applications of)	MM Docket No. 86-440
)	
Achernar Broadcasting Company)	File No. BPCT-860410KP
)	
Lindsay Television)	File No. BPCT-860410KQ
)	
For Construction Permit)	
For a New UHF TV Station on Channel 64)	
at Charlottesville, Virginia)	

O R D E R

Adopted: June 25, 1999

Released: June 28, 1999

By Assistant General Counsel, Administrative Law Division:

1. The above-captioned applications for a construction permit for a new television station on channel 64 in Charlottesville, Virginia are pending before the Commission. On January 30, 1998, Lindsay Television and Achernar Broadcasting Company filed a settlement agreement that, if approved, would obviate the need for an auction in this comparative broadcast proceeding. Specifically, the settling applicants have resolved interference issues to the satisfaction of the National Radio Astronomy Observatory (Observatory), located in Green Bank, West Virginia¹ and have reached a settlement of the comparative proceeding providing for their merger into a single corporate entity, Charlottesville Broadcasting Company.

¹ The Commission initially disqualified both Achernar and Lindsay because of objectionable interference with the Observatory. *Achernar Broadcasting Company*, 6 FCC Rcd 5393 (1991), *recon. denied*, 7 FCC Rcd 1778 (1992). The D.C. Circuit reversed the Commission. *Achernar Broadcasting Company v. FCC*, 62 F.3d 1441 (D.C. Cir. 1995). Following the remand from the court, Lindsay and Achernar developed an engineering proposal acceptable to the Observatory.

2. To effectuate the proposed settlement agreement, the settling applicants seek a waiver of the Commission's reallocation of channel 64 for public safety use.² They urge that a waiver is warranted to facilitate the resolution of one of the oldest comparative broadcast proceedings. They pledge that, if authorized to operate on channel 64, they will afford the requisite interference protection to existing public safety licensees and that, as is required by Section 337(e), they will cease operating on channel 64 by the end of the period allowed for transition to digital television.³ Alternatively, without expressing any preference, they seek a construction permit for channel 19, asserting that the substitution of channel 19 complies with both the analog table of television allotments and the digital table of television allotments.

3. The Mass Media Bureau opposes the requested waiver to permit operation of an NTSC television station on channel 64 as inconsistent with the Commission's determination in the reallocation rulemaking not to authorize any additional analog television stations on channels 60-69. Citing adjacent channel interference to land mobile operations on channel 18 in Washington, D.C., the Bureau also opposes the substitution of channel 19. Similar concerns regarding the alternative request for channel 19 were initially raised by Association of Public-Safety Communications Officials-International, Inc. (APCO). In response to petitioners' subsequent proposal to install filtering equipment, APCO has now withdrawn its objection to the use of channel 19, provided the license contains certain express conditions designed to protect land mobile and public safety operations.⁴ APCO, however, continues to object to the grant of a construction permit for NTSC channel 64 in Charlottesville, based generally on the statute and the Commission's reallocation action.

² As directed by Section 337, 47 U.S.C. § 337, the Commission reallocated television channels 63, 64, 68, and 69 to the fixed and mobile services, and designated this spectrum exclusively for public safety use. *Reallocation of Television Channels 60-69 (Report and Order)*, 12 FCC Rcd 22953 (1998), *recon. denied*, 13 FCC Rcd 21578 (1998). Because of the unusual facts presented in this adjudicatory proceeding, however, the Commission's denial of Lindsay's petition for reconsideration of that reallocation action was without prejudice to its pending waiver request for permission to operate a new analog television station on channel 64 in Charlottesville. *Id.* at 21582 ¶ 7.

³ Section 337(e) provides that any entity licensed to operate an analog television station shall cease such operations at the end of the transition to digital television. The end of that period is prescribed by Section 309(j)(14)(A), which provides that "a television broadcast license that authorizes analog television service may not be renewed to authorize such service for a period that extends beyond December 31, 2006."

⁴ APCO requests the following express conditions: (1) The station must install and maintain a filter on its channel 19 transmitter providing 75-80 dB of attenuation in the 494-500 MHz band (channel 18); and (2) The station must accept interference from current or future 494-500 MHz land mobile facilities operating from base stations located within 50 miles of Washington, D.C., and mobile units operating within 30 miles of their associated base station. Supplemental Response of APCO To Consolidated Reply To Oppositions, filed December 4, 1998, at 2.

4. Pursuant to Section 337, 47 U.S.C. § 337, the Commission reallocated spectrum for public safety use,⁵ and has adopted licensing and service rules governing such public safety use.⁶ Section 337, while not expressly precluding the authorization of new analog television stations on channels 60-69, does require that any entity licensed to operate an analog television station on channels 60-69 must cease such operations by the end of the transition to digital television. Thus, the grant of petitioners' request for channel 64 in Charlottesville could potentially affect public safety use of the spectrum only during the DTV transition period. In evaluating the impact of the requested waiver on spectrum for public safety services, it would therefore be useful to have further information as to the availability during the DTV transition period of additional spectrum (other than channel 64) suitable for public safety use and the extent to which existing, already authorized, non-public safety operations would, in any event, preclude public safety use of channel 64 during the DTV transition period.

5. In this regard, APCO has opposed, without corroborating evidence, the grant of a construction permit for a new NSTC television station on channel 64 because of the anticipated impact of such use on future public safety services nationwide, in rural southwestern Virginia, and in the nearby metropolitan areas of Washington, D.C. and Richmond, Virginia. Without regard to whether, as APCO has argued, the Commission's reallocation action patently precludes the requested use of channel 64 in Charlottesville during the transition period, it would be useful to have the parties to this proceeding, particularly APCO, comment on the availability during that period of additional, unassigned spectrum (other than channel 64) that could be used to provide public safety services in this geographic area and the extent to which existing, already authorized, assignments would preclude the public safety use of channel 64 in that area during the transition period even if petitioners' request is denied.

6. It would also be useful to have further comment from the Mass Media Bureau on petitioners' alternative proposal for channel 19 now that the petitioners have proposed to install certain filtering equipment and APCO has withdrawn its original objections to channel 19. In the event that the Bureau agrees with APCO concerning the impact on public safety services of the proposed substitution of channel 19 and concludes that the assignment of channel 19 to Charlottesville is otherwise acceptable, it would also be useful to have the Bureau's views as to the other objections that have been raised to channel 19.⁷

7. ACCORDINGLY, IT IS ORDERED, That, pursuant to the authority delegated under Section 0.251(c) of the Rules, 47 C.F.R. § 0.251(c), the parties ARE AFFORDED thirty (30) days following the release of this Order to file the comments described in paragraphs 5 and

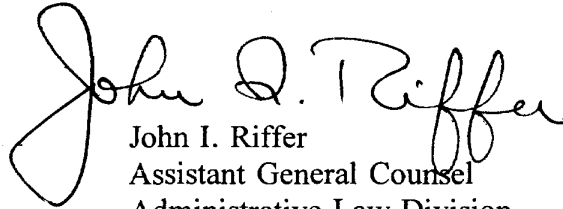
⁵ *Reallocation of Television Channels 60-69 (Report and Order)*, 12 FCC Rcd 22953 (1998), *recon. denied*, 13 FCC Rcd 21578 (1998).

⁶ *The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communication Requirements Through The Year 2010*, 14 FCC Rcd 152 (1998).

⁷ The proposed substitution of channel 19 is also opposed by: (1) Shenandoah Valley Educational Television, the licensee of a translator station on channel 19 in Charlottesville that would be displaced if a full-power commercial station is licensed on that channel; and (2) Viacom, Inc., the ultimate licensee of digital channel 19 in Portsmouth, Virginia.

6 above, that responsive comments MAY BE FILED within fifteen (15) days thereafter, and that replies MAY BE FILED within seven (7) days thereafter.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, reading "John I. Riffer". The signature is fluid and cursive, with the first name "John" being more prominent and the last name "Riffer" following in a similar style.

John I. Riffer
Assistant General Counsel
Administrative Law Division
Office of General Counsel